

# CALIFORNIA STATE BOARD OF EQUALIZATION

## CURRENT LEGAL DIGEST NO. 1065

October 5, 2004

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Delete Annotation 140.0023, **Platinum Used by Oil Refiners** (8/26/70), because it is inconsistent with the conclusion reached by the Board in the Rhodia Memorandum Opinion.

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Delete Annotation 330.2627, **Platinum Used by Oil Refiners** (8/26/70), because it is inconsistent with the conclusion reached by the Board in the Rhodia Memorandum Opinion.

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375.0057 **Format Changes, EPKs and Screeners – When Taxable.** The United States and some parts of the world utilize an “NTSC” format for videotapes. Other parts of the world utilize other formats such as “PAL” or “SECAM.” A studio will sometimes retain a firm to convert a qualified motion picture from one broadcast format to another broadcast format. To complete the work, the firm purchases raw film or tape stock, uses its machinery to transfer the qualified motion picture onto the raw film or tape, and then sells the resulting product to the studio. Sometimes the conversion results in the studio obtaining a single master in another format, and additional post-production is required prior to manufacturing release prints. Other times multiple copies are produced.

Regulation 1529(d)(11) defines a release print as a copy of a qualified motion picture complete in all aspects, which is of a quality suitable for exhibition or broadcast. The manufacture of release prints is not the performance of qualified production services and the sale of a release print to a person for exhibition or broadcast is a retail sale subject to sales tax. (Regulation 1529(b)(3)(A)). Therefore, if the firm converts a qualified motion picture from an NTCS format into multiple broadcast quality copies (release prints) in a different format, the charges will be taxable, absent some exemption or exclusion, e.g., a sale for resale or a sale in interstate or foreign commerce.

Electronic Press Kits (EPKs) and “Screeners” may or may not fall into the category of release prints. An EPK is either a video or DVD prepared for movie studios to be distributed to local television stations prior to the release of a new movie. The studio sends a master of the EPK to the duplicating facility, which fabricates several hundred tape or DVD copies of the EPK for the studio. EPKs often require additional sound editing and color correction before the tape or DVD can be broadcast. If the EPKs are of broadcast quality and are used for exhibition or display without further editing, they constitute release prints, and the charges of the duplicating facility are taxable. If the EPKs are not of broadcast quality, then the preparation of the EPKs constitutes qualified production services, and the charges would be nontaxable.

**Note:** The new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation.

“Screeners” are promotional or marketing copies of motion pictures that are distributed to video stores, critics, industry executives, etc. for personal use. Screeners routinely are “burned in” with an anti-piracy warning making them unsuitable for broadcast or exhibition. If the screeners have anti-piracy warnings, they do not qualify for exhibition or broadcast, and are not release prints. Charges to produce such screeners would not be taxable. 4/8/04. (2005-1).

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Revise annotation 425.0355 **Electric Three-Wheel Scooter.** A durable medical equipment company sells an electric three-wheel scooter that can be utilized as an electric wheelchair. The scooter appears to be similar in both design and function to a conventional four-wheel electric wheelchair, except that the scooter is smaller, more compact, and has only three wheels. It was indicated that Medicare recognizes this device as a covered item if medically necessary.

Electric three-wheel scooters such as the described scooter qualify for the medical exemption under Regulation 1590(k). [Now Regulation 1591.2(b)]. Tax does not apply to the sale or rental of an electric three-wheel scooter to an individual for the personal use of that individual as directed by a physician. In order to ensure that the sale or rental of electric three-wheel scooters meets the criteria for exempt status, the retailer should obtain a written statement from either the customer or the physician that the scooter is for the personal use of the customer as directed by a physician. The written statement should be retained. 10/25/85. (Am. 2005-1).

Note: New section reference effective March 10, 2000.

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Delete Annotation 490.0233, **Returned Merchandise v. Trade-In.** (3/19/91; 5/14/96) because the backup letters contain erroneous information.

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Delete Annotation 550.1295, **Employees’, Teachers’, and Students’ Meals** (4/23/93) because it conflicts with changes to Regulation 1603(j)(2)(D).

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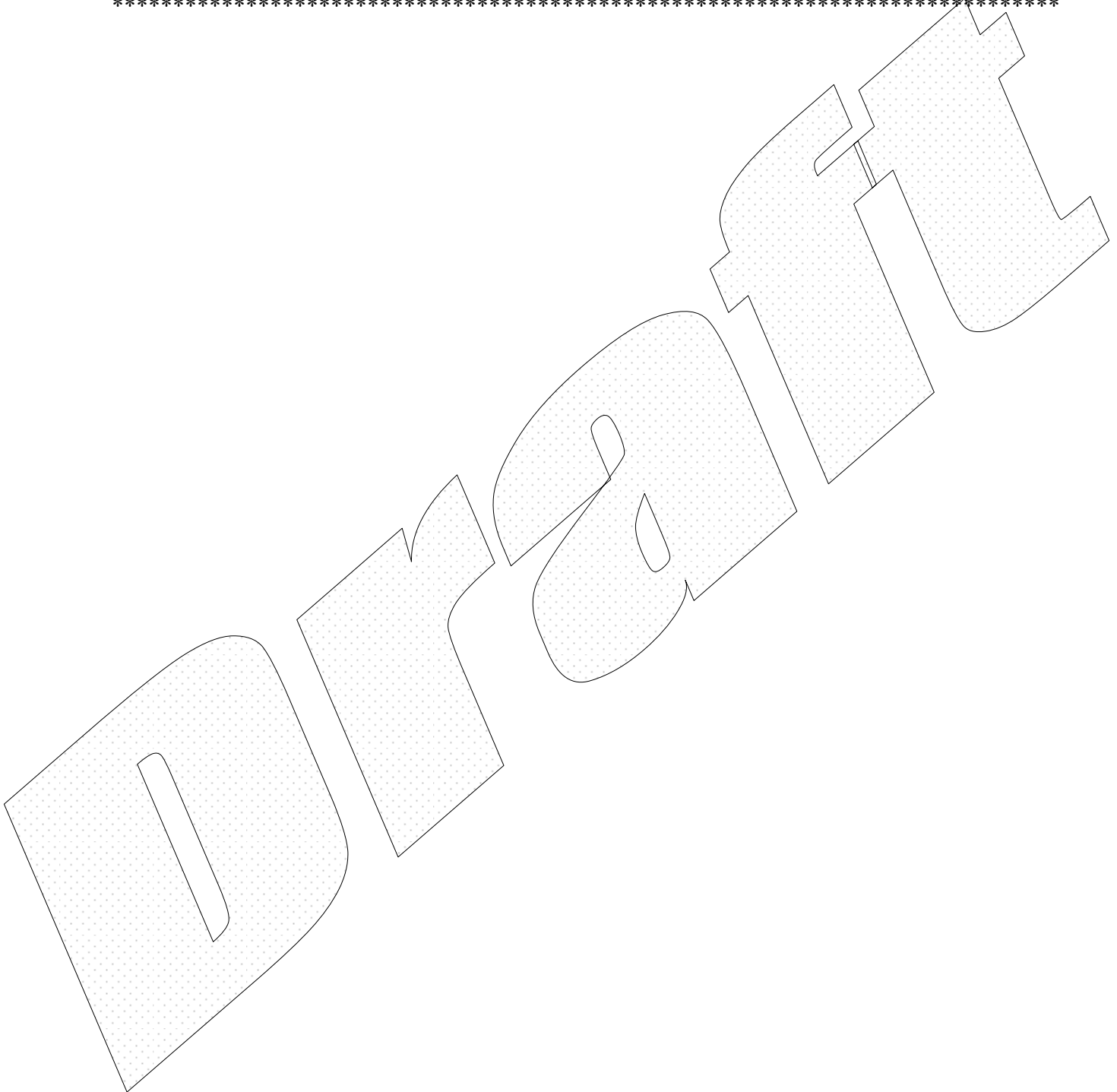
802.0010 **Incorporation of Statutory Provisions by Reference.** A city ordinance levying a district tax incorporates the provisions of Part 1.6 of the Revenue and Taxation Code, including, but not limited to, section 7261 and 7262, by reference “as they are written now and as they may later be amended.” The city seems to have used section 7262.2 as a pattern for this phrase. Does adopting the provisions of sections 7261 and 7262 by reference meet the statutory requirement of including the provisions “in substance” in the ordinance?

Under the principles of “adoption by reference,” the adopting statute is deemed to set forth the statute being adopted in full as it reads on the date the adopting act was enacted. Amendments to the statute being adopted (or even complete repeal) are not automatically

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adopted into the referring statute without saving language such as “as it now reads or may hereinafter be amended.” Section 7262.2 shows the Legislature favors adoption by reference, making it automatic in the case of districts. Therefore, incorporation by reference does meet the requirement that a district tax ordinance contain the provisions of sections 7261 and 7262 “in substance.” 4/28/04. (2005-1).

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